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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/576,999	05/24/2000	Syed Aon Mujtaba	2925-0261P	4786

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EXAMINER

ZEWDU, MELESS NMN

ART UNIT PAPER NUMBER

2683

DATE MAILED: 01/22/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**Advisory Action**

Application No.

09/576,999

Applicant(s)

MUJTABA ET AL.

Examiner

Meless N Zewdu

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: 11, 24 and 37.

Claim(s) rejected: 1-10, 12-23, 25-36 and 38-39.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 2. NOTE: The feature "on same antenna towe" raises new issues that would require further consideration and/or search.

## DETAILED ACTION

### *Advisory Action*

1. This action is in response to the communication filed on 12/19/03.
2. Claims 1-39 are pending in this action.
3. This action is a courtesy explanation regarding the advisory action.

### **Courtesy Explanation:**

4. During the personal Interview conducted on 12/17/03 between Applicant's representative (MR Maier, Reg. No. 51,986) and examiner of record (Zewdu), a disagreement was reflected on the interpretation of the feature "co-located" regarding, one N-dimensional steer-able antenna array and (another) a base station antenna. Applicant's representative asserted this feature is supported in the specification as to mean on same antenna tower. Examiner, on the other hand, asserted that co-located also mean and can include nearby position or location, other than being at the same place or position, since the phrase "co-located" is a relative term and subject to different interpretations. In the current amendment the phrase "co-located" is qualified with another term "**on same antenna tower**", thereby changing, the scope of the original claims. The change in the scope of the claims, due to the newly added feature, would require further consideration and/or search. Furthermore, examiner's broad interpretation of the feature "co-located" is also supported by applicant's definition of the

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feature "co-location" or "co-located". In one instance, the definition goes to say **"other cost savings may be realized by co-locating and possibly sharing other common macro-cell and micro-cell base station components."** In the alternative, it is also defined as, **"in the present invention, "co-location" may be defined as within 30 feet, or more preferably within 15 feet, or even more preferably within 5 feet, and even more preferably within 2 feet"**. Finally, it is also defined as **" "co-located" may also be defined as on the same antenna tower regardless of distance separation."** (see spec. page 3, lines 15-20). So, it is clearly shown that "co-located" in the original claims does not mean only "on same antenna tower". It can also mean or include the range of distance between 2 to 30 feet as provided in the specification.

5. In the "Remarks" section of the current amendment, applicant's representative appears to have an opinion that, examiner suggested to amend the claims with the phrase "co-located" and further with the qualifying feature "on same antenna tower" to bring the application into an allowable condition. The Interview summary clearly shows that there was no such an agreement, particularly regarding the allowable status of the claims. In fact the feature "co-located" was already included in the rejected claims. Hence, there was no need to re-incorporate it again and examiner would not have suggested as such. Examiner, in response to a question posed by applicant's representative, has indicated that if the claims include the feature "on same antenna tower", they will distinguish over the prior art and this in turn will require a new search and/or consideration.

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meless N Zewdu whose telephone number is (703) 306-5418. The examiner can normally be reached on 8:30 am to 5:00 pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on (703) 308-5318. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0377.

Meless Zewdu

M. Z

Examiner

  
WILLIAM TROST  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

01 January 2004.